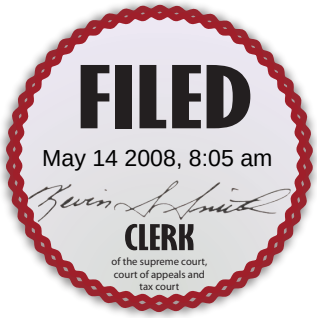

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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM BEELER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0708-CR-467
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0606-FB-114856

May 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

William Beeler appeals his convictions and sentence for Robbery, five counts of Criminal Confinement, and his adjudication as a habitual offender. We affirm.

Issues

Beeler raises five issues, which we consolidate and re-state as follows:

I. Whether there was sufficient evidence for the jury to find Beeler guilty beyond a reasonable doubt;

II. Whether his convictions for Robbery and Criminal Confinement of a bank manager violated Double Jeopardy; and

III. Whether his sentence is inappropriate.

Procedural History

On June 16, 2006, Beeler entered a bank, wielded a gun, forced a victim to bind other victims, and stole more than $210,000. A jury found him guilty as charged. The trial court found him to be a habitual offender and sentenced him to a seventy-year term of imprisonment, to be fully executed. He now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

Beeler asserts that the State failed to submit sufficient evidence to prove beyond a reasonable doubt that he robbed the bank and confined five victims. In part, he claims that the State did not rebut the evidence he offered regarding his whereabouts at the time of the crime.

Our standard of review when considering the sufficiency of the evidence is well

settled. We will not reweigh the evidence or assess the credibility of witnesses. Robinson v. State, 699 N.E.2d 1146, 1148 (Ind. 1998). Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. Id. We will uphold a conviction if there is substantial evidence of probative value from which a jury could have found the defendant guilty beyond a reasonable doubt. Id. "The State is not required to rebut directly a defendant's alibi but may disprove the alibi by proving its own case-in-chief beyond a reasonable doubt." Thompson v. State, 728 N.E.2d 155, 159 (Ind. 2000).

A. Sufficient Evidence of Charged Conduct

The State charged Beeler with Robbery, as a Class B felony, and five counts of Criminal Confinement (one per victim), all as Class B felonies. A person who, while armed with a deadly weapon, takes property from another by putting that person in fear or by threatening force commits Robbery. Ind. Code § 35-42-5-1. A person who, while armed with a deadly weapon, substantially interferes with the liberty of a person, without his consent, commits Criminal Confinement. Ind. Code §§ 35-42-3-1 and -3.

Testimony revealed the following facts. Days before the robbery, bank customer Warren Mann saw a black male sitting in a black Ford Taurus. The Taurus was parked where employees typically parked and had been backed into the parking space, so that the car faced the bank. Suspicious, Mann wrote down the numbers of the license plate, but omitted one letter.

At 8:00 a.m. on June 16, 2006, bank employees Christopher Ferguson and Liza Burge

opened the bank for business. A customer, Max Martens, immediately entered. At approximately 8:02 a.m., Beeler entered and pointed a handgun at Burge. At Beeler's direction, Ferguson closed the blinds in the drive-through area. Ferguson used duct tape to bind Burge's and Martens' arms behind them and to cover their mouths. Bound, Burge and Martens sat in a small copy room. Beeler forced Ferguson to the tellers' drawers and instructed him to place the cash into a burgundy bag with a black strap. Long and cylindrical, the bag appeared to be the sort designed to carry a fold-up camping chair. Ferguson complied.

As Beeler and Ferguson then approached the vault, they heard the front door open. Claudine Polley and her eight-year-old son entered. Ferguson approached them and told them to follow Beeler's instructions. Beeler took Polley's purse and her son's GameBoy, and instructed them to sit down outside the copy room. They did so. By this time, there were six people in the bank: Beeler and the five people alleged to have been confined. Beeler and Ferguson then emptied the vault. Although Beeler repeatedly instructed Ferguson not to look at him, Ferguson did so several times. Beeler left the bank with more than $210,000 in cash. He exited and greeted Sandra Whitaker as she entered the bank. Ferguson contacted authorities.

At 9:00 a.m., Mann, the customer who days before had written down the partial license plate number, returned to the bank to find the investigation in progress. Days later, Mann reported his observations and the license plate information to Lawrence Police Officer Gary Woodruff. Officer Woodruff searched all twenty-six possible license plate

combinations and found one black Ford; it was registered to Beeler, a black male. Over approximately the same period, Beeler purchased a car ($5512), used two money orders to pay rent that had been due at the beginning of the month ($1060), and used cash to purchase a mattress ($954) and other furniture ($1558). Police searched Beeler's new car and his apartment, and found $1200 in cash and a burgundy lawn chair.

At trial, defense witnesses testified that Beeler was elsewhere at the time of the robbery. Beeler challenges the victims' identification of him as the robber. When shown photographs of six faces, Ferguson identified Beeler with ninety percent certainty. At trial, however, Ferguson testified as follows:

> After seeing this gentleman in person today, I am 100% positive. There is no doubt in my mind that that gentleman is him.
> . . .
>
> After seeing him in person, seeing the size of him, after seeing him walk in front of me out here in the lobby, the way he carried himself, the – you know, the features of his face. Then I see the large flat nose, some wrinkles down the side of his nose that I remember from the day of the event. All of that, in combination with the size of him – the size of him, the height of him, there is no doubt in my mind.

Transcript at 75. Martens was "pretty confident" or "fairly confident" that a person in the photo array was the robber. Id. at 108. Burge was "100% sure" in identifying Beeler. Id. at 153. Polley and Whitaker also identified Beeler.

Four victims and another eyewitness identified Beeler. A sixth person saw a black male sitting in Beeler's car, parked conspicuously at the bank prior to the robbery. In the week after the robbery, Beeler spent more than $9000, much of it in cash or money orders. His apartment contained $1200 in cash and a lawn chair the same color as the long,

cylindrical bag used to collect the bank's money. There was sufficient evidence for the jury to find beyond a reasonable doubt that Beeler committed Robbery and Criminal Confinement of five victims, despite his assertion of an alibi.

B. Sufficient Evidence for Adjudication as Habitual Offender

In addition, Beeler argues that the evidence was not sufficient for the trial court to find him a habitual offender. When reviewing the sufficiency of a habitual offender adjudication, we apply the same standard as that referenced above. See Ramsey v. State, 853 N.E.2d 491, 497 (Ind. Ct. App. 2006), trans. denied.

A person is a habitual offender if the State proves beyond a reasonable doubt that he has two prior, unrelated felony convictions. Ind. Code § 35-50-2-8(g). Beeler acknowledges on appeal that the State proved his conviction of Auto Theft. He argues, however, that the State failed to submit any reliable evidence that he was previously convicted of Theft. To the contrary, an Information, Chronological Case Summary, and Order Setting Conditions of Probation (signed by the trial court) indicated that Beeler was convicted and sentenced for Theft, as a Class D felony, in 1989 – one of the predicate felonies alleged. This Court has recognized that prosecutors routinely offer a wide variety of court documents, including sentencing orders and case chronologies, to prove a prior conviction. Abdullah v. State, 847 N.E.2d 1031, 1034 (Ind. Ct. App. 2006). Accordingly, there was sufficient evidence to find Beeler to be a Habitual Offender.

II. Double Jeopardy

Beeler argues that his convictions for Robbery and Criminal Confinement of Ferguson, the bank manager, violated Article I, Section 14 of the Indiana Constitution. "No person shall be put in jeopardy twice for the same offense." IND. CONST. art. I, § 14.

> [T]wo or more offenses are the "same offense" . . . if, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.

Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999). In applying the actual evidence test, we review whether the defendant demonstrated a reasonable possibility that the evidence used by the jury to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense. Id. at 53. Convictions of Robbery and Criminal Confinement are not the same offense when the confinement was more extensive than that necessary to commit the robbery. Benavides v. State, 808 N.E.2d 708, 712 (Ind. Ct. App. 2004), trans. denied.

In charging Beeler with Robbery, as a Class B felony, the State cited his use of a handgun to put Ferguson in fear. Meanwhile, the State charged Beeler with Criminal Confinement "by holding Christopher Ferguson at gunpoint." Appendix at 49. On appeal, the State argues that Beeler's confinement of Ferguson exceeded that necessary to commit the robbery. In so arguing, the State emphasizes the fact that Beeler closed the blinds and bound Ferguson with duct tape. This evidence does establish a period of confinement greater and more extensive than was necessary to simply commit the robbery. Wielding a gun, Beeler forced Ferguson to close the blinds, took the money, and bound Ferguson with duct tape. We do not believe there was a reasonable possibility that the jury used the same

evidence to establish the essential elements of both offenses. Therefore, we find no Double Jeopardy violation.

III. Independent Review of Sentence

Beeler argues that his seventy-year term of imprisonment is inappropriate. Under Indiana Appellate Rule 7(B), this "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant "'must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Beeler was convicted of six Class B felonies and adjudicated a habitual offender. The term for a Class B felony may be between six and twenty years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5. For a Class B felony, the Habitual Offender enhancement may be from ten to thirty years. Ind. Code § 35-50-2-8. Here, Beeler's sentence for the Robbery conviction was the maximum, twenty-year term. That sentence was enhanced by twenty years, in light of the Habitual Offender adjudication, for a total sentence of forty years on the Robbery conviction. The trial court sentenced Beeler to an aggravated term of fifteen years for each of the five Criminal Confinement convictions. Count II was concurrent to the sentence for Robbery, Counts III and IV were concurrent (fifteen years), and Counts V and VI were concurrent (fifteen years). The trial court ordered Counts III/IV to be consecutive to

Counts V/VI, for a total of thirty years for the Criminal Confinement convictions. Forty years for Robbery consecutive to thirty years for Criminal Confinement equaled a seventy-year sentence.

As to the nature of the offense, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1081. Beeler made preparations by observing the bank in advance of the robbery. He endangered four adult victims, an eight-year-old victim, and a bystander who entered the bank just late enough to avoid Beeler's threats. Beeler forced a victim to bind a co-worker and a customer. Beeler then commanded the bank manager to do his will – collect money from teller drawers, communicate with a mother and son who walked in while the robbery was in progress, and collect more money from the vault. In doing so, Beeler demonstrated a familiarity with foiling multiple of the bank's security provisions. Indeed, he was so effective that he might have succeeded in taking more than $210,000, absent an extremely observant bank customer.

As to his character, the trial court found one mitigating circumstance, an involved circle of family and friends. However, the trial court found Beeler's criminal history to be a very significant aggravating circumstance. Beyond the convictions proved for purposes of the Habitual Offender finding, Beeler was convicted of Armed Robbery in Illinois in 1985, Battery in 1993, and Possession of Cocaine, as a Class C felony, in 1995. Based upon our review, Beeler's sentence is not inappropriate.

Conclusion

There was sufficient evidence for the jury to find Beeler's guilt beyond a reasonable doubt. His convictions for Robbery and Criminal Confinement of the bank manager did not violate Article I, Section 14 of the Indiana Constitution. His sentence is not inappropriate.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.